

MANDATE

United States Court of Appeals For the First Circuit

D.C. #04-10049
J. Young

No. 04-2516

UNITED STATES OF AMERICA,

Certified and Issued as Mandate
under Fed. R. App. R. 41.

Appellee,

v.

Richard Cushing Donovan, Clerk

CHD
JUAN CONCE, A/K/A KING SANTOS,

Deputy Clerk

Defendant, Appellant.

Date: DEC 01 2005

Before

Lynch, Circuit Judge,
Campbell, Senior Circuit Judge,
and Lipez Circuit Judge.

JUDGMENT

Entered: November 10, 2005

The defendant Juan Conce has pled guilty to selling eleven grams of crack cocaine in violation of federal law. He appeals from the criminal sentence imposed by the Honorable William G. Young of the United States District Court for the District of Massachusetts.

The defendant challenges the career offender enhancement of his sentence made on the basis of the District Court's determinations concerning his prior criminal convictions in state court for possessing narcotics with an intent to distribute. His challenge is foreclosed by our earlier decisions. United States v. Work, 409 F.3d 484, 491 n.1 (1st Cir. 2005); United States v. Lewis, 406 F.3d 11, 21 n.11 (1st Cir. 2005).

The defendant and the government agree that remand is necessary for resentencing in light of United States v. Booker, 125

S.Ct. 738 (2005), decided by the United States Supreme Court while this appeal was pending.

The conviction is affirmed. The sentence is vacated. The case is remanded to the original sentencing judge.

By the Court:

Richard Cushing Donovan, Clerk

By: MARGARET CARTER
Chief Deputy Clerk.

Certified Copy to Hon. William G. Young; Sarah Thornton, Clerk USDC

cc: Messrs. Hrones, Conce, Levitt & Ms. Chaitowitz